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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,914	05/22/2001	Daniel J. Magine	DJM0001	9837

7590

07/05/2002

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EXAMINER

PIHULIC, DANIEL T

ART UNIT

PAPER NUMBER

3662

DATE MAILED: 07/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/862,914

Applicant(s)

MAGINE ET AL.

Examiner

Daniel Pihulic

Art Unit

3662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 17, 19-30, 32-44, 46-53, 55-69, 71 and 73-78 is/are rejected.
- 7) ☒ Claim(s) 16, 18, 31, 45, 54, 70 and 72 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 & 3
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

2. Claims 52 and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 52 depends from claim 55.

3. The abstract of the disclosure is objected to because it exceeds 250 words. Correction is required. See MPEP § 608.01(b).

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 5, 6, 9-15, 17, 19, 20, 35, 36, 39, 40, 43, 44, 46, 47, 51-53, 55, 56, 59, 62, 63, 66-69, 71, 73, 74, 77 and 78 are rejected under 35 U.S.C. 102(b) as being anticipated by Gardos. The Gardos reference discloses the utilization of a two way audible communication system that may be integrally mounted on a diver's mask (see Fig. 1), a push button (PTT) to transmit, retrofitting face masks (see column 3, lines 19-21), mounting brackets (see Fig. 2), water activated switch (see column 8, lines 21-25), and the utilization of a plurality of power sources (see column 8, line 54) as recited in the aforementioned claims.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.


7. Claims 3, 4, 21-34, 37, 38, 41, 42, 48, 49, 57, 58, 60, 61, 75 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardos in combination with Comerford et al. The Gardos reference discloses the utilization of a two way audible communication system that may be integrally mounted on a diver's mask as recited in the claims. The difference between the Gardos reference and the claims is that the claims recite the utilization of a visual display and transmitting dive parameter data. The Comerford et al reference teaches that it was well known in the art to utilize a visual display and transmitting dive parameter data. It would have been obvious to modify the Gardos reference to utilize a visual display and transmitting dive parameter data as motivated by the Comerford et al reference to enable the Gardos system to provide data that is important to the safety of the divers.

8. Claims 7, 8, 41, 42, 64 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardos in combination with Hirsch. The Gardos reference discloses the utilization of a two way audible communication system that may be integrally

mounted on a diver's mask as recited in the claims. The difference between the Gardos reference and the claims is that the claims recite the utilization of a tactile indicator. The Hirsch reference teaches that it was well known in the art to utilize a tactile indicator for a diver. It would have been obvious to modify the Gardos reference to utilize a tactile indicator as motivated by the Hirsch reference to enable the Gardos system to assist divers to navigate in murky waters ( see column 1, line 28-31).

9. Claims 16, 18, 31, 45, 54, 70 and 72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Pihulic whose telephone number is 703-306-4168. The examiner can normally be reached on Monday through Thursday from 7 a.m. to 5 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza, can be reached on 703-306-4171. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9326 for non-final responses and 703-872-9327 for after final responses. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
**Daniel Pihulic**  
**Primary Examiner**  
**Art Unit 3662**